

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

March 22, 2004

RECEIVED
MAR 22 2004
PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended
PSC 2004-00044

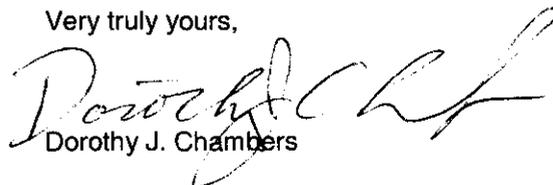
Dear Mr. Dorman:

BellSouth notes the Rebuttal to its Reply to Petitioners Response and Opposition to BellSouth's Motion to Sever or Impose Procedural Requirements filed by the CLECs on March 18.

Enclosed for the Commission's information is the Procedural Ruling entered on March 16, 2004, by the Alabama Public Service Commission in Docket No. 29242, *In the Matter of Joint Petition for Arbitration of NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*. BellSouth would like to bring to the Commission's attention that the Alabama Commission granted the exact procedural restrictions requested by BellSouth.

Eleven copies of the filing are provided to the Commission and a copy of the entire filing is served on each party.

Very truly yours,



Dorothy J. Chambers

Enclosure

cc: Parties of Record

531987



STATE OF ALABAMA
 ALABAMA PUBLIC SERVICE COMMISSION
 P.O. BOX 304260
 MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
 JAN COOK, ASSOCIATE COMMISSIONER
 GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
 SECRETARY

ALABAMA PUBLIC SERVICE COMMISSION

In the Matter of)	
)	Docket No. 29242
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp., KMC)	
Telecom V, Inc., KMC Telecom III LLC,)	
and Xspedius Communications, LLC on)	
Behalf of its Operating Subsidiaries,)	
Xspedius Management Co. Switched)	
Services LLC, Xspedius Management Co. of)	
Birmingham LLC, Xspedius Management)	
Co. of Mobile LLC, and Xspedius)	
Management Co. of Montgomery LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.,)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

Procedural Ruling

On February 11, 2004, NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services LLC, Xspedius Management Co. of Birmingham LLC, Xspedius Management Co. of Mobile LLC, and Xspedius Management Co. of Montgomery LLC filed a Joint Petition for arbitration seeking resolution of certain issues arising between the

Joint Petitioners and BellSouth Telecommunications, Inc., (BellSouth) in the negotiation of an interconnection agreement.

In support of the petition, the Joint Petitioners stated that the window for filing a formal request for arbitration under the Telecommunications Act of 1996 opened on January 17, 2004, and closed on February 11, 2004.

Joint Petitioners listed 107 issues, with ten of those issues not common among all parties. Joint Petitioners stated that they anticipated a team witness approach. Joint Petitioners requested a temporary waiver of Commission Rule T-26(A), which requires that petitioners for arbitration file testimony and discovery on the date they file the petition for arbitration. Joint Petitioners noted that they would agree to the Commission granting BellSouth a similar extension of the deadline for filing of Additional Requirements, should BellSouth request such an extension.

In support of the request for a waiver of T-26(A), Joint Petitioners stated that the parties are still in robust negotiation and that some of the outstanding issues may well be resolved subsequent to the filing for arbitration. In addition, the task of preparing testimony and discovery requests are expected to be costly and resource-intensive. Joint Petitioners stated that these costs could not be justified if there is likelihood that the parties will resolve some of the outstanding issues. Further, Joint Petitioners commented that they have been unable to devote their time to preparing prefiled testimony and discovery requests because of their focus on negotiations.

Joint Petitioners stated that should the Commission decide that separate petitions for arbitration be filed by each of the Joint Petitioners, the Joint Petitioners request that the Commission grant them adequate time to prepare and submit their individual petitions for arbitrations and toll the statutory deadlines imposed by Section 252(b)(1) of the Communications Act for good cause.

On March 2, 2004, BellSouth Telecommunications, Inc., filed its opposition to Joint Motion for Partial and Temporary Waiver of the Commission's Arbitration Requirements, Motion to sever or to Impose Procedural Restrictions, and Request for Expedited Consideration. BellSouth indicated that the Joint Petitioners' filing for arbitration of issues was not in accordance with Commission Rules for Arbitration. According to BellSouth, Joint Petitioners should have filed separate petitions for arbitration with a request that these petitions be consolidated into a Joint Petition. Also, Joint Petitioners did not seek a waiver of T-26(A) in a timely fashion. Further, petitioners' basis for seeking a waiver of Commission Rule T-26 is not sufficient to justify such a waiver according to BellSouth

BellSouth asserted that the Commission should sever the proceeding or in the alternative impose procedural restrictions on a joint proceeding. Specifically, BellSouth objected to the Joint Petitioners' anticipated team witness approach. Additionally, BellSouth has requested that the Commission require that Joint Petitioners' positions be identical on each common issue. Further, BellSouth requested that the Commission restrict Joint Petitioners to cross examining each BellSouth witness only once. Finally, BellSouth requested that if the Commission permits the CLECs to continue jointly, they should be limited to one witness per issue or subissue.

BellSouth also stated that to the extent that the Commission waives Rule T-26(A) for the Joint Petitioners, BellSouth requests Commission waiver of Rule T-26(B) for response.

On March 8, 2004, BellSouth filed its response to the Joint Petitioners request for arbitration. BellSouth did not file prefiled testimony or discovery requests.

On March 9, 2004, Joint Petitioners filed a Joint Response, and Opposition of Petitioners to BellSouth's Motion was filed on March 2, 2004. In a letter dated March 15, 2004, BellSouth issued its reply to the Joint Response.

Having considered the points raised by the parties, the Panel grants the Joint Petitioners request for Joint Arbitration of issues as well as their request for a temporary waiver of Commission Rule T-26 (A). The Panel requires Joint Petitioners to file all items required in Rule T-26(A) that were not filed with the Original petition for arbitration, including discovery requests and testimony, by April 6, 2004.

Petitioners position must be identical on each common issue. Petitioners may sponsor one witness per issue or subissue. Joint Petitioners may cross examine each BellSouth's witness only once.

BellSouth shall file its response to discovery requests by Joint Petitioners, testimony, discovery requests, as well as any other information required by Commission Rule 4-26(B) on May 7, 2004.

Joint Petitioners shall file responses to BellSouth discovery by May 31, 2004.

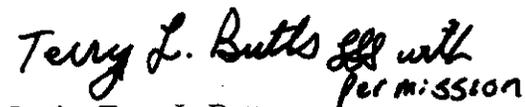
The Parties are instructed to file jointly an agreed schedule for filing additional testimony, as well as a proposed hearing schedule on May 31, 2004

IT IS SO RULED.

Done at Montgomery, Alabama this 16th day of March, 2004.

Arbitration Panelists


Larry S. Smith


Justice Terry L. Butts


Rolland Casey